

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Eric OWHADI et al.)	Examiner: T. T. Tran
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Serial No.:	10/652,892)	Art Unit: 2179
))
Filed:	August 29, 2003)	Our Ref: 500201991-02US
)	B-5223 621219-2
For:	"TECHNICAL SUPPORT SYSTEMS AND METHODS FOR USE IN PROVIDING TECHNICAL SUPPORT")	Date: December 21, 2007
)	Re: <i>Appeal to the Board of Appeals</i>

BRIEF ON APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the Final rejection dated July 25, 2007, for the above identified patent application. Appellant submits that this Appeal Brief is being timely filed because the Notice of Appeal was filed on October 25, 2007. Please deduct the amount of \$510.00 for the fee set forth in 37 C.F.R. 1.17(c) for submitting this Brief from deposit account no. 08-2025.

REAL PARTY IN INTEREST

The real party in interest to the present application is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences related to the present application.

STATUS OF CLAIMS

Claims 1-20 are pending in the application, stand rejected, are the subject of this Appeal, and are reproduced in the accompanying appendix.

STATUS OF AMENDMENTS

No Amendment After Final Rejection has been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention claimed in claim 1 is directed to a method of obtaining technical support for a data-processing device (10), comprising initiating (21) a support session during which device-specific data is conveyed from the device to a support provider (11) to assist the support provider in responding to a support query (p. 5 l. 4 - p. 6 l. 13), and polling (26) the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated (p. 6 l. 23 - p. 7 l. 29; Figs. 1-4).

The invention claimed in claim 13 is directed to a method of providing asynchronous web-based active technical support from a support provider (11) to a user of an electronic device (10) during a support session, the method comprising receiving (24) device-specific data to assist the support provider in responding to a support query (p. 5 l. 4 - p. 6 l. 13), dispatching (25) a polling application operative to poll the support provider for a response to the query and notifying (28) the user that a response has become available, the polling application being dispatched, from or on behalf of the support provider, in response to an instruction generated using a trusted applet (p. 6 l. 23 - p. 7 l. 29; Figs. 1-4).

The invention claimed in claim 14 is directed to a server-side technical support source (11) comprising a web server to participate in asynchronous messaging with a client-side device (10), the support source being operative to supply (25), to the device, a polling application whereby repeated polling of the support source for a response to a support query may be

effected, the polling application being supplied to the device using a trusted applet (p. 6 l. 23 - p. 7 l. 29; Figs. 1-4).

The invention claimed in claim 15 is directed to a software element on a computer readable medium for use in the provision of technical support to a user of a data-processing device (10), the software element being, in response to an indication of trust being given by the user, operative to effect or permit a download (25) of a polling element whereby a support provider (11) may be polled, on a repeated and automated basis, for a response to a support query (p. 6 l. 23 - p. 7 l. 29; Figs. 1-4).

The invention claimed in claim 18 is directed to a method of obtaining technical support for a data-processing device (10), comprising establishing (21) a support session using a web connection during which device-specific data is conveyed (24) from the device to a support provider (11) to assist the support provider in responding to a support query (p. 5 l. 4 - p. 6 l. 13), downloading (25) a polling application from the support provider using a trusted applet, and polling (26), using the polling application, the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated (p. 6 l. 23 - p. 7 l. 29; Figs. 1-4).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- Issue 1: Whether claims 1-2, 8-9 and 12 are patentable under 35 U.S.C. 102(b) over U.S. Pat. No. 6,145,096 to Bereiter (hereinafter "Bereiter").
- Issue 2: Whether claims 10-11, 13-18 and 20 are patentable under 35 U.S.C. 103(a) over Bereiter in view of the Pawlan article (hereinafter "Pawlan").
- Issue 3: Whether claims 3-7 and 19 are patentable under 35 U.S.C. 103(a) over Bereiter in view of Pawlan and further in view of the Indigo Rose Software Forums post (hereinafter "Indigo").
- Issue 4: Whether claims 15-17 comply with the written description requirement.
- Issue 5: Whether claims 15-17 are directed to statutory subject matter.

ARGUMENT

Issue 1: Whether claims 1-2, 8-9 and 12 are patentable under 35 U.S.C. 102(b) over U.S. Pat. No. 6,145,096 to Bereiter (hereinafter “Bereiter”).

In section 6 of the final Office Action of May 16, 2007, the Examiner once again rejects claims 1-2, 8-9 and 12 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,145,096 to Bereiter. In particular, the Examiner finds that, with regard to claim 1, Bereiter discloses all of the claimed limitations, reiterating his opinion that Bereiter discloses the presently claimed “polling the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated” by steps 84 and 86 of his Fig. 5. In their previous reply, Appellants explained why this is an incorrect interpretation of Bereiter.

Specifically, Appellants noted that the method of Bereiter is iterative in that the client keeps providing information about the problem encountered until the support provider can identify the problem and thus provide a solution (please see, e.g., col. 7 ll. 17-29). Step 86 is clearly not a polling *of* the support provider, but rather a polling *by* the support provider *of the client* for more information regarding the problem encountered (the new diagnostic map). Contrary to the Examiner’s assertion, the client of Bereiter does not poll the support provider for a response; rather, the support provider keeps polling the client (by repeatedly sending new diagnostic maps to be solved by the client/on the client machine) until the support provider is able to identify the problem and offer a solution.

In the present Action the Examiner alleges to answer the above by averring that “Bereiter further teaches that during the a [sp] support session, a data set indicative of a current operating state of the client machine is collected and conveyed from the client machine to the server for analysis and based on the analysis performed at the server node, the data gathering process is repeated at the client machine, iteratively, until a solution for the problem is available.” Appellants could not possibly agree more, and submit that this statement clearly proves their case. As so unequivocally stated by the Examiner, “the data gathering process is *repeated at the client machine, iteratively, until a solution for the problem is available.*” This is unmistakably the exact opposite of the presently claimed “*polling the support provider for a response to the query.*” The differences between the two methods could not possibly be more self evident. In the

claimed method, the client computer sends its information to the server then proceeds to poll the server whether a solution (response) is available. In Bereiter, the client computer sends its information to the server, and then the server repeatedly requests more and more information from client computer until it is able to provide a solution (response). The client of Bereiter initiates the support session, after which it takes on a passive role and only responds to requests for further information from the support server. In Appellants' method, the client machine not only initiates the support session but assumes an active role to repeatedly poll the support server as to whether a solution is available.

Appellants take note of the Examiner's thoroughly meritless assertion that "the features upon which applicant relies (i.e., the client polling) are not recited in the rejected claim(s)" and by way of answer direct the Board's kind attention to the actual text of claim 1:

1. A method of obtaining technical support for a data-processing device, comprising initiating a support session during which device-specific data is conveyed from the device to a support provider to assist the support provider in responding to a support query, and polling the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated.

There are but two devices recited in claim 1, the data-processing device and the support provider. Furthermore, the claim clearly recites a method of obtaining technical support for the data-processing device. Is the Examiner suggesting that it is not the data-processing device that is conducting the polling of the support provider? Does he suggest that a skilled person (or anyone with a decent command of the English language, for that matter) would interpret the claim as teaching that the support provider polls itself? Or does he interpret the claim as teaching that a third, unidentified, entity conducts this polling? Of course, merely spending a few extra minutes actually reading the specification would have eased all of these doubts from the Examiner's mind, as he would have then unequivocally learned that yes, it is indeed the client that conducts the polling of the support provider.

Appellants respectfully submit that although the Examiner has failed to grasp them, the differences between the Bereiter reference and the method of claim 1 are clear and beyond doubt

(as evidenced by the Examiner's own description of the reference), and request the Board to kindly consider the above and overturn the Examiner's rejection on Appeal and pass this claim to issue.

Claims 2, 8-9 and 12 depend from claim 1. In view of the above discussion, in light of which it is submitted that claim 1 is allowable, Appellants further submit that claims 2, 8-9 and 12 are also allowable at least by virtue of their dependency on claim 1.

Issue 2: Whether claims 10-11, 13-18 and 20 are patentable under 35 U.S.C. 103(a) over Bereiter in view of the Pawlan article (hereinafter "Pawlan").

In section 8 of the final Office Action the Examiner again rejects claims 10-11, 13-18 and 20 under 35 U.S.C. 103(a) as being unpatentable over Bereiter in view of Pawlan. As explained in Appellants' previous submission, claim 13 recites, *inter alia*, dispatching a polling application operative to poll the support provider for a response to the query and notifying the user that a response has become available, the polling application being dispatched, from or on behalf of the support provider. As discussed above with respect to claim 1, Bereiter does not in fact disclose such polling by the client of the support provider, but rather polling by the support provider of the client for additional information regarding the encountered problem. Thus, for this reason at least, the asserted combination of Bereiter and Pawlan do not anticipate each and every limitation of claim 13, and Appellants thus respectfully request the Board to overturn the Examiner's rejection on appeal and pass claim 13 to issue as well.

Similar to claim 13, claim 14 recites, *inter alia*, a polling application whereby repeated polling of the support source for a response to a support query may be effected, and claim 15 recites a software element operative to effect or permit a download of a polling element whereby a support provider may be polled, on a repeated and automated basis, for a response to a support query. Likewise, claim 18 recites downloading a polling application from the support provider using a trusted applet and polling, using the polling application, the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated. As discussed, this limitation is not disclosed by the art on record, and Appellants respectfully submit that claims 14, 15 and 18 are also novel and patentable over the art on record for the same reasons discussed above with respect to claim 1.

Claims 10-11 depend from claim 1, claims 16-17 depend from claim 15, and claim 20 depends from claim 18. “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, in light of the above discussion of claims 1, 15 and 18, Appellants submit that claims 10-11, 16-17 and 20 are also allowable at least by virtue of their dependencies.

Issue 3: Whether claims 3-7 and 19 are patentable under 35 U.S.C. 103(a) over Bereiter in view of Pawlan and further in view of the Indigo Rose Software Forums post (hereinafter “Indigo”).

In section 9 of the final Office Action the Examiner rejects claims 3-7 and 19 as being obvious in view of Bereiter and Pawlan and further in view of Indigo. Claims 3-7 depend from claim 1 and claim 19 depends from claim 18, and as such Appellants submit that these claims are thus also allowable at least by virtue of their dependency and respectfully request the Board to overturn the Examiner on appeal and pass these claims to issue as well.

Issue 4: Whether claims 15-17 comply with the written description requirement.

In section 2 of the final Office Action the Examiner rejects claims 15-17 under 35 U.S.C. 112, 1st paragraph, for allegedly failing to comply with the written description requirement because “there is no description in the specification to support” the recitation of a “computer readable medium.” Appellants submit that this rejection elevates form over function to heights bordering on the preposterous, as the Examiner is in effect asserting that a person of skill in the art of computers would not understand, after reading Appellants’ disclosure, that the *computer method* disclosed therein may be provided on a *computer readable medium*. Appellants apologize for having to waste the Board’s time with a response to this assertion, and respectfully request the Board to overturn this rejection on Appeal and, perhaps, educate the Examiner as to why the disclosure of computer implemented methods would imply to the skilled person the use of computer readable media.

Issue 5: Whether claims 15-17 are directed to statutory subject matter.

In section 3 of the final Office Action the Examiner rejects claims 15-17 under 35 U.S.C. 101 because although claim 15 recites a software element on a computer readable medium, to the Examiner “it appears that the element would reasonably be interpreted by one of ordinary skill in the art as software, *per se*.” Appellants note at the outset that in the space of one paragraph, the

Examiner has elevated the skilled person from being confounded by a description that does not explicitly direct him to use computer readable media to a state where he is able to *ignore* the specific recitation of such computer readable media and instead focus upon the software instructions contained thereon, "per se." More to the point, Appellant note that this pronouncement on the Examiner's part is completely senseless. Whatever may "appear" to the Examiner aside, all words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." (emphasis added) It is a well settled corollary of this doctrine that no word in a claim can be ignored, as the Examiner attempts to do here. The mete and bounds of Appellants' invention is defined by the claims, and claim 15 very clearly recites a computer readable medium. Appellants respectfully request the Board to overturn this meritless rejection on Appeal as well, and pass this case to issue.

* * *

CONCLUSION

For the many reasons advanced above, Appellants respectfully contends that each pending claim is patentable and reversal of all rejections and allowance of the case is respectfully solicited.

I hereby certify that this document is being transmitted to the
Patent and Trademark Office via electronic filing.

December 21, 2007

(Date of Transmission)

Respectfully submitted,



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Claims

1. A method of obtaining technical support for a data-processing device, comprising initiating a support session during which device-specific data is conveyed from the device to a support provider to assist the support provider in responding to a support query, and polling the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated.

2. A method according to claim 1 wherein the polling is effected by a polling application obtained from the support provider.

3. A method according to claim 2 wherein the polling application, during the support session, is executed subsequent to each boot or start-up sequence of the device.

4. A method according to claim 2 wherein the polling application, during the support session, is stored on or on behalf of the device, in a manner whereby the application is executed subsequent to each boot or start-up sequence of the device.

5. A method according to claim 3 wherein, in a Windows O.S. environment, a Run key located in or operatively associated with the registry of the device is used to execute the application, subsequent to each said boot or start-up sequence.

6. A method according to claim 5 wherein, upon termination of the support session, the Run key is removed or disabled.

7. A method according to claim 6 wherein the application subsequently is deleted using a delete command executed in accordance with a Run Once key located in or operatively associated with the registry.

8. A method according to claim 2 wherein the support session is established using a web connection and wherein the polling application is downloaded from the support provider using an applet.

9. A method according to claim 8 wherein the applet is operative to download a data harvester to gather the device-specific data.

10. A method according to claim 8 wherein the applet is used only in response to an indication of trust being given by a user of the device.

11. A method according to claim 10 wherein the support provider conveys to the user a trust request, agreement to the request allowing execution of the applet.

12. A method according to claim 1 wherein the polling is effected using HTTP.

13. A method of providing asynchronous web-based active technical support from a support provider to a user of an electronic device during a support session, the method comprising receiving device-specific data to assist the support provider in responding to a support query, dispatching a

polling application operative to poll the support provider for a response to the query and notifying the user that a response has become available, the polling application being dispatched, from or on behalf of the support provider, in response to an instruction generated using a trusted applet.

14. A server-side technical support source comprising a web server to participate in asynchronous messaging with a client-side device, the support source being operative to supply, to the device, a polling application whereby repeated polling of the support source for a response to a support query may be effected, the polling application being supplied to the device using a trusted applet.

15. A software element on a computer readable medium for use in the provision of technical support to a user of a data-processing device, the software element being, in response to an indication of trust being given by the user, operative to effect or permit a download of a polling element whereby a support provider may be polled, on a repeated and automated basis, for a response to a support query.

16. A software element according to claim 15 in the form of an applet, the polling element being transmissible from the support provider using HTTP.

17. A software element according to claim 16 wherein the polling element has a data footprint of no more than about 50 KB.

18. A method of obtaining technical support for a data-processing device, comprising:
establishing a support session using a web connection during which device-specific data is

conveyed from the device to a support provider to assist the support provider in responding to a support query;

downloading a polling application from the support provider using a trusted applet and polling, using the polling application, the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated.

19. A method according to claim 18 wherein the polling application, during the support session, is executed subsequent to each boot or start-up sequence of the device.

20. A method according to claim 18 wherein the applet is operative to download a data harvester to gather the device-specific data.

Evidence Appendix

There is no evidence submitted with the present Brief on Appeal.

U. S. Appln. No. 10/652,892

Brief on Appeal dated December 21, 2007

In support of Notice of Appeal submitted October 25, 2007

Related Proceedings Appendix Page C-1

Related Proceedings Appendix

There are no other appeals or interferences related to the present application.